

REMARKS

The present application includes claims 1-11, 14-23, 25-32, 34-37, 40-46 and 49, all of which remain rejected. In particular, these claims stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 6,424,996 ("Killcommons") in view of U.S. 2002/0016718 ("Rothschild"). The Applicants respectfully traverse these rejections for at least the reasons previously discussed during prosecution and the following:

As previously noted, independent claims 1, 14, 25, 34, and 49 were amended to specify that the portal is hosted by the remote data center. *See* December 6, 2007 Amendment. In contrast to the cited art, specifically Killcommons, which provides the user interface in web page form to a user unit via an email and then has the user's computer assemble and display the web interface locally, the presently pending claims recite a portal hosted by the remote data center, rather than by the user accessing the data. The cited references, alone or in combination with one another, do not describe, teach or suggest these limitations. Thus, the Applicants respectfully submit that amended independent claims 1, 14, 25, 34, and 49, as well as their respective dependent claims 2-11, 15-23, 35-37, and 40-46 should be allowable over the cited art of record.

The Applicants refer to and incorporate by reference the remarks provided in the previous responses filed on December 6, 2007, and June 6, 2006 (and resubmitted with the RCE filed on July 11, 2006). Rather than repeat many of these arguments, the Applicants refer to the previous arguments and provide the following additional remarks to illustrate how the presently pending claims are distinct from the cited art of record, namely Killcommons and Rothschild.

Killcommons:

Killcommons includes a server having an assembly unit gathering selected data to form an email package, as well as a processing unit to encode and compress the data prior to packaging, and an email server ending the package to a user unit. *See* Killcommons, *e.g.*, Abstract. The user unit includes a browser enhancement module requesting an email file from the server, decompressing and decoding received files in the email, and displaying the decoded files along with a received and constructed user interface to a display associated with the user unit. *See, e.g.*, Abstract.

Thus, in Killcommons, studies are pushed to a user via email “so that the files are already available *at the user’s computer* when the user is ready to view the data.” *See id.* at column 3, lines 9-11 (emphasis added). A server stores medical data, and a user interface provided via email by the server allows the user to view the medical data on the user’s local computer. *See id.* at column 3, lines 58-64. An assembly unit forms an email package which is sent, along with the user interface, to the user computer via the email server. *See id.* at column. 3, line 66 – column. 4, line 22. Thus, the user interface is provided to the user computer in an email package which also includes the data to be viewed. The data is then stored locally on the user computer, and the server can be uninvolved in the analysis and use of the data by the local user computer’s browser enhancement module working in conjunction with the local received copy of the user interface web page.

Unlike the remote or application service provider model recited in some or all of the pending claims, the user in Killcommons does the work with the information and interface received via email from the server. *See, e.g.*, at column 10, lines 35-40 and col. 11, lines 30-63.

Thus, the user interface web page, as shown in Fig. 4, is generated locally on the user unit from an email package sent from the server and received at the user unit, rather than viewing a web page or other portal at a server remotely via a browser.

Additionally, with respect to providing medical services, the Office Action points to Killcommons at column 9, lines 37-39. *See* March 5, 2008 Office Action at page 3. This portion of Killcommons states, however, that an operator “may select from various instances of treatment or separate types of data, e.g., laboratory results, radiology with reports or pathologies.” *See* Killcommons at column 9, lines 37-39. The Office Action appears to assert that Killcommons is providing a service by providing treatment via the information downloaded from the server to the local user computer. The Applicants respectfully disagree. **In reading Killcommons, it does not appear that the Killcommons email package provides a treatment or any other such service to a user.** Rather, the email package of Killcommons allows a user to locally review the results of different instances of treatment, also referred to as patient studies. *See, id. e.g.*, at column 9, lines 37-41 (“The operator may select from various **instances** of treatment or separate types of data, e.g., laboratory results, radiology with reports or pathologies. Appropriate related data from an external database may be displayed as part of the selected data”). **Thus, the Killcommons system only provides data or information, but not services.**

For at least these reasons, the Applicants respectfully submit it is clear that Killcommons, which employs a server to gather image data into an email that is sent via an electronic mail program to a user computer to be extracted and stored on the local user’s machine, is far removed from the presently claimed invention (*see, id. e.g.*, column 3, line 31 – column 4, line. 22 and column 9, line 42 – column 10, line 57). The Killcommons system “**pushes**” the email

data to the user's local machine **as opposed to employing a centralized, application service provider model**. To that end, Killcommons assembles the medical data and user interface into an *email for local storage* rather than remotely providing access via a *portal* from a remote data center. Shifting functionality from a user to a server, and thus eliminating the browser enhancement module and email exchange, would be counter to the teachings of Killcommons, as shown in Figures 1, 2(a-d) and 3 and associated description. Furthermore, as previously acknowledged within the Office Action, Killcommons does not teach, nor does it fairly suggest, a remote data center. *See* September 6, 2007 Office Action at page 4 ("Killcommons et al. fail to teach remote data center"). The current Office Action seemingly acknowledges this deficiency, as well. *See* March 5, 2008 Office Action at page 4 ("Killcommons et al. fails to teach said portal hosted by said remote data center").

While the Office Action acknowledges that none of the cited references discloses the claimed provision of medical content and medical services (*see id.* at page 3), the Office Action asserts that the limitations regarding medical content and medical services represent "non-functional information stored and accessed by the accessible portal." The Office Action asserts that the medical content and medical services "are not functionally related to the functions of the centralized medical information system ... and will not distinguish the claimed invention from the prior art in terms of patentability." *See id.*

However, in reviewing the *In re Gulack* decision cited in the Office Action, the Board of Patent Appeals and Interferences, and the Court of Appeals for the Federal Circuit reviewing the Board's decision, focused on the functional relationship between components of the claims and whether a meaningful functional relationship gives patentable weight to certain components. In

the claims of the present application, **a functional relationship certainly exists between the medical content and medical services provided by the remote data center and the portal through which they are provided to the user.** The web page discussed in Kilcommons is a different type of locally-constructed and locally-driven construct than the remotely hosted and provided portal of the present claims. Additionally, the web page of Killcommons provides information sent to the user in an email **but does not provide services**, such as time management services, educational services, administrative services, etc., via a portal as recited in the pending claims.

As illustrated when reviewing Killcommons and the other cited art, a remotely-hosted portal, let alone any portal, providing medical services in addition to medical information is not found in the cited art of record. **Such a combination of services and information is novel and relates to the portal, which is used to provide such services and information to the user rather than forcing the user to rely only on local services and information at a user terminal.**

As noted in *In re Gulack*, “[d]ifferences between an invention and the prior art cited against it **cannot be ignored merely because those differences reside in the content of the printed matter,**” or in this case the content (i.e., medical information and services) provided via the portal. Thus, according to the reasoning **established by the Board and the Federal Circuit**, such subject matter having a functional relationship **is and should be entitled to patentable weight in distinguishing the presently pending claims over the prior art of record.** As such, Killcommons clearly lacks such a portal provided by a remote data center to allow access to and

use of medical information and medical services. Thus, for at least these reasons, the Applicants respectfully submit that the pending claims define allowable subject matter.

Rothschild:

As noted above, the Office Action acknowledges that “Killcommons et al. fails to teach said portal hosted by said remote data center.” *See* March 5, 2008 Office Action at page 4. The Office Action relies on Rothschild to cure the various deficiencies of Killcommons. *See id.*

In particular, the Office Action states the following:

Rothschild et al. teaches that the central data management system (30, Fig. 1) is located remotely from the medical imaging center, and communicates with local image workstation (20, Fig. 1) via a remote interface (25, Fig. 1) (see: paragraph 155). In addition, Rothschild et al. teaches that the central data management system (30, Fig. 1) will include web hosting by advanced server such as Exodus (see: paragraph 157). This suggests that the remote data center (central data management system) includes web hosting to provide service and access by the local image workstation via the remote interface.

See id. Notably, the Office Action acknowledges that Killcommons “fails to teach said **portal hosted by said remote data center**.” *See id.* While the Office Action summarily concludes that “Exodus,” as recited in Rothschild, “suggests’ certain things, the Office Action does not point to any specific portion of Rothschild that discloses a “portal hosted by a remote data center.” As shown above, the Office Actions’ explanation of Rothschild does not even mention a portal, **let alone one hosted by a remote data center**. Thus, for at least this reason, the Applicants respectfully submit that the Office Action has not established a *prima facie* case of obviousness with respect to the pending claims.

As discussed previously, Rothschild fails to remedy the deficiencies of Killcommons with respect to the pending claims. Even combining the disclosure of Rothschild with Killcommons fails to describe, teach or suggest the portal and remote provision of information and services recited in the presently pending claims. For example, Rothschild discloses a “medical image management system and method that uses a **central data management system to centrally manage the storage and transmission** of electronic records containing medical images between remotely located facilities.” *See* Rothschild at Abstract. Specifically, Rothschild teaches the electronic delivery of medical images to doctors and other interested parties preferably using “push” technology, which delivers an image to a remote image viewing system. *See, id., e.g., ¶¶* [0036], [0042] and [0053-54]. A polling system is provided so that a remote or local workstation may request queued data to be delivered that is awaiting delivery in a medical image database management system. *See id.* at ¶¶ [0089-90]. Additionally, Rothschild provides a system for tracking delivery of the image. *See id.* at ¶¶ [0037] and [0068]. Similar to Killcommons, **Rothschild does not provide medical services as recited in the pending claims of the present application.**

Thus, the Applicants respectfully submit that Rothschild clearly does not describe, teach or fairly suggest providing other **medical information, including patient information, library information and administrative information, for example, via a portal.** Additionally, Rothschild does not describe, teach or suggest providing *medical services*, such as time management services, educational services, and administrative services, *via a portal hosted by a remote data center*. Rothschild does not describe, teach or suggest *remotely* executing and providing **medical services** via a portal or web site. Rothschild does not describe, teach or fairly

suggest a portal providing a single access point for access to medical content and medical services. **Rather, Rothschild addresses a medical *image* management system capable of communicating medical *images* in the form of electronic records.** See, e.g., Abstract.

While the Applicants acknowledge that Rothschild states that “the central data management system (30) will include collocation and web hosting that may be provided for example by advanced servers such as is commercially available from Exodus” (*see id.* at ¶ [0157]), this does not make up for the various deficiencies of Killcommons detailed above. Accordingly, the Applicants respectfully submit that Rothschild does not describe, teach or fairly suggest the limitations claimed in the present application.

Because neither Killcommons nor Rothschild describes, teaches or fairly suggests providing access to and viewing of medical content, including a medical image and at least one of patient information, library information and administrative information, and providing remote execution of and interaction with medical services, including time management services, educational services, and administrative services, via a portal hosted remotely from the user by a remote data center, as recited, for example, in claim 1 of the present application, **any combination of Killcommons and Rothschild still faces at least this deficiency with respect to the pending claims.** Furthermore, **hosting medical content and services and providing such content and services remotely runs counter to the teachings of Killcommons**, which places a premium on the rapid communication of complete files via email and the pushing of information to the local user to *rely on the local user to provide the processing power* to view and/or manipulate the images and the storage capacity to store the images.

The Applicants respectfully submit that explanations provided herein clarify the disclosure and scope of the Killcommons reference and the inability of Rothschild to cure its defects. Accordingly, the Applicants respectfully submit that claims 1, 14, 25, 34, and 49 and their respective dependent claims are allowable over the prior art of record and are patentable for at least the reasons given above. Allowance of claims 1-11, 14-23, 25-32, 34-37, 40-46, and 49 is respectfully requested.

CONCLUSION

In general, the Office Action makes various statements regarding the pending claims and the cited references that are now moot in light of the above. Thus, the Applicants will not address such statements at the present time. However, the Applicants expressly reserve the right to challenge such statements in the future should the need arise (e.g., if such statement should become relevant by appearing in a rejection of any current or future claim).

The Applicants respectfully request reconsideration of the claim rejections for at least the reasons discussed above. If the Examiner has any questions or the Applicants can be of any assistance, the Examiner is invited to contact the undersigned attorney.

The Commissioner is authorized to charge any necessary fees, or credit any overpayment to the Deposit Account 50-2401.

Respectfully submitted,

Date: May 28, 2008

MCANDREWS, HELD & MALLOY, LTD.
500 West Madison Street, 34th Floor
Chicago, Illinois 60661

Telephone: (312) 775-8000

Facsimile: (312) 775-8100

/Joseph M. Butscher/
Joseph M. Butscher
Registration No. 48,326
Attorney for Applicants